



# Appeal Decision

Hearing held on 10 November 2009  
Site visit made on 10 November 2009

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by **Andrew Dale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

Decision date:  
15 December 2009

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## Appeal Reference: APP/G3110/C/09/2109208

### 71 London Road, Headington, Oxford OX3 9AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Starbucks Coffee Co. (UK) Ltd against an enforcement notice issued by Oxford City Council.
- The Council's reference is 09/00525/ENF.
- The notice was issued on 20 July 2009.
- The breach of planning control as alleged in the notice is without planning permission, change of use from retail (Class A1) to a mixed use as retail and cafe (A1/A3).
- The requirement of the notice is to cease the use of the property as a mixed use as retail and cafe (A1/A3).
- The period for compliance with the requirement is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed and planning permission is granted, with the notice being corrected and quashed, as set out below in the Formal Decision.**

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### Preliminary matters

1. The red edge on the plan attached to the notice before me is not at all distinct. Even so, the main parties were under the impression that the red edge incorrectly included the neighbouring property 71A London Road. Furthermore, the notice omits to record that the unauthorised mixed use takes place only at the ground floor level of 71 London Road.
2. Having regard to the above, there was agreement between the main parties that the land to which the notice relates could be defined precisely in writing alone as "The ground floor premises at 71 London Road, Headington, Oxford OX3 9AA". I shall correct the notice along these lines; this would get the notice on a proper footing and cause no injustice to the parties.

### The appeal under ground (a)

#### *The subject use*

3. From the evidence before me including the appellant's 12 month summary of till receipts, I have no reason to dispute the conclusion of the appellant and the
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Council that the subject use is indeed a sui generis mixed use, incorporating Class A1 and Class A3 elements. The split between those two A classes is broadly 50:50 in terms of turnover. This mixed use commenced in 2008.

***Planning policy***

4. I have had regard to the adopted and emerging development plan documents mentioned in the written submissions. However, the main parties agreed at the hearing that the policies of the adopted Oxford Local Plan 2001-2016 were of most relevance to this appeal, particularly saved Policy RC.4. Of the current and draft national planning policies and guidance mentioned, I consider that Planning Policy Statement 6: Planning for Town Centres (PPS6) is of most relevance.

***Main issue***

5. Having regard to this policy background and the Council's reasons for issuing the notice, I consider that the main issue is the effect of the change of use on the viability and vitality of the retail function of Headington District Shopping Centre.

***Reasons***

***Testing against the Council's policy approach***

6. Headington is one of four district centres which form the second tier of the retail hierarchy in Oxford. The appeal property lies within the Headington District Shopping Frontage as defined under saved Local Plan Policy RC.4. Within this defined frontage planning permission will only be granted for:
  - a. Class A1 (shop) uses;
  - b. Other Class A uses only where the proportion of units at ground level in A1 use does not fall below 65% of the total ground level units in the centre; and
  - c. Other uses only where the proportion of units at ground level in Class A use does not fall below 95% of the total ground level units in the centre.
7. This policy is aimed at maintaining and enhancing the role of district centres as the second tier of Oxford's retail hierarchy. Whilst such centres mainly sell convenience, standard durable and specialist goods, this does not rule out other retail activity or other services. One approach, not commented on by the parties in their written submissions, would be to assess the proposal against part c. of Policy RC.4 since a sui generis use could well be described as an "other use". However, in the circumstances of this case, such an approach would effectively ignore the clear A1 and A3 elements of the use. I have therefore assessed the proposal against criterion b. which is the approach followed by the parties.
8. Taking into account the lawful uses of properties, including the last such use where properties are vacant, there was agreement between the parties that with the disputed mixed A1/A3 use in operation the proportion of units at ground level in A1 use has fallen to 64.6% of the total ground level units in the centre.

9. Like the appellant I consider the breach to be very marginal. This is illustrated by the fact that rounding up 64.6% to the nearest whole number would give a figure of 65%. Nonetheless, the breach of policy cannot be ignored but I will have regard to the extent of the breach in examining whether the other material considerations outweigh the conflict with the wording of Policy RC.4.

*Other material considerations*

10. However the subject mixed use is labelled or categorized, it is an inescapable fact that retail (A1) sales broadly amount to about half of the total sales at the unit. Studying the patronage surveys, it is very likely to be the case that the number of customers that account for the retail (A1) side of the business compares favourably with the pedestrian flows into many A1 retail units in Headington hereabouts. It is evident to me that the retail function of the unit is dynamic and no persuasive case was put that would lead me to the view that the current mixed use has resulted in the wholesale displacement of a retail function from the Headington District Shopping Frontage.
11. The appearance of the appeal premises does not have any adverse impact on the retail function of the unit or wider shopping frontage. Although there is a seating area in the front half of the unit, the existing well-lit retail display is also fairly prominent in views from the street. A window display will further enhance the perception of the retail side of the business and I heard that its installation is imminent. That said, I believe that most people are now familiar with coffee shop chains like Starbucks and understand that coffee, other drinks and food are available for consumption on or off the premises, regardless of the building's appearance.
12. The Ward Councillor mentioned a shopping survey of Headington conducted in March/April 2009. Whilst no document was formally put in at the hearing, it was said that 3.5% of the 144 responses included a reference to there being too many coffee shops in Headington. The overwhelming majority thus had no objections to the number of coffee shops in Headington. Indeed, there is clearly not, in my opinion, a local concentration of coffee shops within Headington District Centre. The Council class Café Noir on Osler Road near to the appeal property as an A4 use. Other evidently lawful mixed A1/A3 uses (La Croissanterie and Queens bakery shop/cafe) are sited at the opposite end of the District Shopping Frontage. Those two units and other units solely in the A3 use class that I saw offer a different format to the innovative coffee shop format found at the appeal property. I note also that planning permission was granted for the alterations to the forecourt at No.71 which has provided a level threshold at the store entrance. These factors are in line with all of the Government's objectives set out in paragraph 1.4 of PPS6 in that this mixed use enhances consumer choice within Headington, is evidently an efficient, competitive and innovative retail/café use and has brought about improvements to the building which is now accessible to all.
13. The Council has produced no empirical survey evidence to demonstrate that the introduction of this mixed A1/A3 use has weakened the attractiveness of Headington as a retail centre. The subject coffee shop is open during normal shopping hours. It is a use that requires a "high street" location to properly function. Coffee shops are increasingly regarded as being a beneficial addition

to the overall shopping experience in many different retail locations. The patronage/footfall and customer surveys carried out by independent market research companies on behalf of the appellant would suggest that this mixed use contributes to the commercial success of the Headington District Shopping Centre. I have closely studied the methodology and assumptions of both surveys. I consider that both surveys are sufficiently robust to allow reasonable conclusions to be drawn.

14. The patronage/footfall survey demonstrated that the subject use attracted nearly 1200 customers during the 2-day survey period (Thursday 10 September and Saturday 12 September 2009). This is substantially higher than the number of customers entering the other A1 shops that were surveyed apart from the Londis supermarket. This is despite a lower general passing footfall in the vicinity of 71 and 73 (Blockbuster Video) London Road which, in turn, tends to confirm the peripheral location of the appeal property. It is indeed well removed from the principal crossroads in the centre (Windmill Road, Old High Street, London Road) and the public car parking facility next to Waitrose. The results also show that the development attracts a far greater proportion of the passing footfall than any of the other outlets surveyed.
15. The customer surveys undertaken at the subject coffee shop involved 200 interviews. I find the following results to be key. 20.5% of respondents gave shopping as the main purpose of their visit to Headington, whilst another 20% were in the area to visit Starbucks itself. 75% had especially planned to visit Starbucks. In response to the question "What else will you be doing in the Headington Centre today?" a variety of responses were naturally forthcoming, but 83 responses referred to shopping, 17 a return to Starbucks, 3 a visit to the post office, 2 for window shopping and 1 a visit to a charity shop.
16. I consider that both surveys clearly point towards the subject use having a positive effect on the shopping environment hereabouts. The use patently encourages to a material degree combined trips and pedestrian activity.
17. It is likely that the operator would have to close the store should the requirements of the notice be followed up given the reduction in turnover from the removal of all or most of the cafe use. It may well be that an A1 use would come forward but given the current economic climate there would clearly be the risk of a vacancy for some period of time. What is certain is that the current benefits of the existing operation to the vitality and viability of the retail function of Headington District Shopping Centre, which are real and occurring, would be lost, together with, as emphasized by the store manager, employment for 14 or 15 local people and the work that has been achieved with community groups in Headington (e.g. with Windmill Primary School and local parent groups, one sponsored by the NHS).

*Conclusions on the ground (a) appeal*

18. There is conflict with Local Plan Policy RC.4 but I am mindful that the breach is limited. I have not found an adverse effect on the viability and vitality of the retail function of Headington District Shopping Centre. As such the underlying objective of that policy would not be compromised. Cumulatively, the other

material considerations that have been put before me justify a departure from the exact wording of Policy RC.4.

19. In reaching my decision I have had full regard to the previous appeal decisions submitted by both parties and taken them into account in this appeal. It seems to me that each decision was reached on its merits having regard to the pertaining policy backgrounds and the individual circumstances of the different cases. I have assessed this appeal similarly on its own merits. I realise that previous appeals were dismissed in respect of 123 London Road, Headington (in January 2008) and 138-140 London Road, Headington (in January 2009). The former related to a change of use from A1 to A5, the latter from A1 to A2. They are not therefore directly comparable, in addition to which in each case those Inspectors found no material considerations of sufficient weight to overcome the policy objections.
20. I am aware that a key concern of the Council is that the success of this appeal may undermine the longer term viability and vitality of the retail function of Headington District Shopping Centre. I did not dismiss this concern lightly. However, I have assessed the policy approach alongside other material considerations. The decision to grant planning permission does not result in the abandonment of Policy RC.4, or set a precedent to justify the introduction of future non-retail uses into Headington District Shopping Centre. It would be necessary for the promoters of any such future proposals to demonstrate that there were material considerations which should override Policy RC.4. If things remain the same in terms of the proportion of different uses within this District Shopping Frontage, the next non-retail operator requiring planning permission would have to make an even stronger case than the current appellant because the resulting baseline percentage of A1 uses would be lower than 64.6%.
21. Insofar as I was made aware, the other unauthorised non-retail uses in Headington District Centre referred to by the Council would be within the Council's control, if those uses are not first corrected by the operators to A1 uses. They have not influenced my decision either way.
22. It is therefore appropriate for me to now consider the matter of conditions.

### **Conditions**

23. The Council's statement contains four suggested conditions. The first requires the development to be commenced within three years; at the hearing the Council recognised that such a condition is unnecessary. Instead of implementing an agreed scheme to treat cooking odours and fumes, an alternative condition, limiting the use and restricting the primary cooking of unprepared food on the premises, was discussed at the hearing. As this better suits the circumstances of the business and would equally protect residential amenities, the alternative condition is imposed. An air conditioning system has been installed at the property pursuant to a planning permission issued under reference 08/01535/FUL. I am not convinced about the necessity of imposing a condition to further control air conditioning apparatus; the Council's third suggested condition is not therefore imposed. To safeguard the living conditions of nearby residents, including those living above the premises, with

regard to noise, I consider it would suffice to control the hours the use is open to the public, as discussed at the hearing.

24. The appellant company is to provide merchandise displays within the shop window. This relatively simple device will enhance the retail presence of the business. The third condition I have imposed requires such a display to be provided at all times.

### **Conclusion**

25. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed on ground (a) and I shall grant planning permission in accordance with the deemed application under section 177(5) of the 1990 Act as amended, which will now relate to the corrected description of the relevant premises.

### **Formal Decision**

26. I direct that the enforcement notice be corrected at Section 2 by the deletion of the words under the heading THE LAND TO WHICH THE NOTICE RELATES and the substitution therefor of the words "The ground floor premises at 71 London Road, Headington, Oxford OX3 9AA".
27. Subject to this correction I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the change of use from retail (Class A1) to a mixed use as retail and cafe (A1/A3) at the ground floor premises at 71 London Road, Headington, Oxford OX3 9AA, subject to the following conditions:
1. The premises shall only be used for the sale of hot and cold drinks, sandwiches and light refreshments for consumption on or off the premises. No primary cooking of unprepared food shall be carried out on the premises.
  2. The premises shall only be open to the public between the hours of 07.30 to 20.00 on Mondays to Saturdays and between the hours of 09.00 to 18.00 on Sundays.
  3. A window display of merchandise available for purchase inside the premises shall be provided at all times in the window fronting London Road.

*Andrew Dale*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Jim Tarzey BA (Hons), MRTPI	Partner at Pegasus Planning Group LLP, 2-10 Kings Parade Mews, Clifton, Bristol BS8 2RE
Alex Anderson	Principal Planner at Pegasus Planning Group LLP
Audi Emery	Starbucks Coffee Shop Manager at 71 London Road, Headington, Oxford
Anna Clark	District Manager for Starbucks Coffee Co. (UK) Ltd
Kevin Valenzuela	Estates Manager for Starbucks Coffee Co. (UK) Ltd.

### **FOR THE LOCAL PLANNING AUTHORITY:**

Tom Woof Dip Urban Design, BA (Hons) in Planning Studies, MRTRI	Planning Consultant, DPS Ltd, Furrow Green Farm, Wharton, Kirkby Stephen CA17 4LQ
Andrew Murdoch BA (Hons), DipTP, MRTPI	Principal Planner, Oxford City Council

### **INTERESTED PERSONS:**

Councillor Ruth Wilkinson	Ward Councillor, Oxford City Council
Elizabeth Whitwick	Local resident
Stephanie Jenkins	Local resident
Alex Comerford	Local resident

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Council's letter of notification of the hearing and a list of persons to whom it was sent.
2. Pages 12-8, 12-9 and 12-10 of the Inspector's Report on objections to the Oxford Local Plan 2001-2016.
3. Council's survey of Headington District Shopping Centre dated 13 August 2009.
4. Letter dated 22 October 2009 from Heather Armitage (local resident).
5. Letter dated 9 November 2009 from Stephanie Jenkins (local resident).

